

President's Special Review Board:
Unclassified Case Studies

Appendix E of the Report of the President's Special Review Board refers to 14 case studies that were prepared for the Board. Attached are two sets of memoranda and various background materials concerning the 12 unclassified case studies: (1) NSC-68; (2) U-2; (3) Bay of Pigs/Operation Mongoose; (4) Cuban Missile Crisis; (5) Covert Operations in Chile; (6) Cambodia Bombing; (7) Opening to China; (8) Mayaguez Incident; (9) Fall of the Shah; (10) Iran Hostage Negotiation; (11) Desert I Rescue; and (12) Marines in Beirut. The 4-5 page draft memoranda were prepared by scholars who were contacted by members of the Board's staff. The shorter 2-page memoranda on the same case studies were prepared by the Board staff as summary memoranda of the 4-5 page drafts.

These case studies should be viewed in the context in which they were requested by the President's Special Review Board and its staff. In order to examine more fully the working of the National Security Council system over time, the Board determined that it would be useful to examine the operation of the NSC system in a variety of real-world situations. The Board members identified a number of issues and incidents from the Truman Administration through the Reagan Administration that they believed might be instructive, and asked that case studies on those issues and incidents be drafted quickly to refresh their memories of the events, to serve as background material for their discussions with participants in these events, and to assist their deliberations. The Board's staff contacted several scholars about these issues and incidents and requested that they produce draft memoranda of 4-5 pages in length summarizing the relevant facts and highlighting certain areas of interest to the Board. The memoranda were supported by relevant extracts from books, articles, and other unclassified primary and secondary source material. As requested by the Board's staff, these memoranda were prepared by their respective authors as drafts under the severest of time constraints.

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MEMORANDUM

To: Messrs. Tower, Muskies, and Scowcroft

From: Graham Allison

Date: January 26, 1987

Subject: The Cuban Missile Crisis: Lessons Possibly Relevant to Your Task

Let me begin by applauding your efforts to put the Iran/Contra episode in some context as you consider recommendations about the role of the NSC. The temptation to learn no more than Mark Twain's cat -- which having sat once on a hot stove never again sat on any stove at all -- is almost irresistible. Yielding to such temptation would certainly be wrong. Cases of analogous instances offer some perspective.

I. The Cuban Missile Crisis. The Cuban Missile Crisis of 1962 remains the classic example of nuclear crisis and crisis management. As Dean Rusk noted at the time, the U.S. and Soviet Union stood "eyeball to eyeball." President Kennedy chose a path of action that in his judgment entailed a 1-in-3 chance of nuclear war. He chose that option after a week of secret deliberations within an executive committee (EXCOM) of the National Security Council augmented by two of his own trusted assistants (his brother Robert, the Attorney General, and his speech writer Ted Sorenson), and a group of "wise men" from the foreign policy establishment. He did so without any advice or consent from Congress, and without informing the public about the existence of a crisis until he had made his decisions about the American response.

This crisis began in October of 1962 when a U.S. U-2 flying over Cuba discovered the Soviet Union in the midst of a secret attempt to introduce strategic nuclear missiles (MRBM's and IRBM's) into Cuba -- contrary to all public and private assurances by Soviet leader Krushchev to the contrary. President Kennedy immediately concluded that this Soviet action was unacceptable. Assembling the EXCOM, he weighed the issues and options, the pros and cons. He changed his own mind several times during the course

of these deliberations. Having initially favored an air strike on the missiles, he chose instead a naval blockade of Soviet shipments of arms to Cuba as a first step and announced this to the world.

There followed a week of public and private bargaining that included public statements by the President, private letters exchanged between the President and Krushchev, formal and informal contacts including conversations between the KGB chief in Washington and an American reporter (John Scali), as well as military movements. At the end of that week, as the Soviet missiles in Cuba approached operational readiness, Kennedy chose to play the final card: "a stick and a carrot." The stick consisted of a threat to bomb the missiles out if Khrushchev did not act immediately to remove them; the carrot was a "deal" that had both a public and a private clause. The public clause was a pledge not to invade or sponsor an invasion of Cuba. The private clause pledged to remove U.S. Jupiter missiles from Turkey. The private deal was known only to the President, his brother, the Secretary of Defense, and the Secretary of State. It was denied by the U.S. government, since to have admitted any such arrangement would have had major negative effects on our European allies and in American politics. The private pledge was communicated by Robert Kennedy to Ambassador Dobrynin -- without the knowledge of members of Congress, the public, or even members of the EXCOM. (The Commission may be interested in the treatment of this action by Rusk, McNamara, Bundy, et al in their "20th Anniversary Lessons of the Cuban Missile Crisis" attached as Appendix B.)

Kennedy's last card worked. Krushchev announced on Sunday, October 28 that the missiles would be withdrawn, and the crisis subsided. This is generally regarded as the "finest hour" of the Kennedy Presidency.

II. Some Lessons.

1. New checks and balances. My reflections on this issue (together with Dick Neustadt) are attached in Appendix 118-121. The Constitution contemplated enforced collaboration between the President and his fellow politicians on Capitol Hill in the decision to go to war. In practice, as the missile crisis illustrates, a strong role for Congress is by no means assured. Today, the President is more dependent on executive officials for advice as well as execution than our Constitution makers could have anticipated. Congress was not an actor in the Cuban missile crisis. Only two hours before broadcasting his decision to the world, the President assembled the leaders of both houses, advised them of the American discovery of Soviet missiles in Cuba, and informed them of his decision to respond with a naval quarantine. The Congressional leaders disagreed strongly with the course of action the President had chosen -- both Senator Fulbright and Senator Russell demanding a more forceful response. Had the crisis turned out unsuccessfully, Congress would presumably have

conducted an investigation identifying the lack of consultation as the problem.

2. Secrecy, time, and the process of deliberation. Most members of the EXCOM changed their minds more than once during the week of deliberation following the discovery of Soviet missiles in Cuba. The President and most of his colleagues initially favored a surprise air strike on the missiles. By the end of the week, the majority favored the blockade. In the course of these deliberations, the Secretary of Defense maintained that "a missile is a missile; it makes no great difference whether you are killed by a missile from the Soviet Union or Cuba." He therefore counseled reserve. The National Security Advisor, McGeorge Bundy argued for diplomacy, approaching Krushchev without provoking a public confrontation. Robert Kennedy was impressed with the Tojo analogy and was thus dead set against any surprise attack. Dean Acheson and other foreign policy establishment representatives strongly favored the air strike. In Acheson's words, "As I saw it at the time, and still believe, the decision to resort to the blockade was a decision to postpone the issue at the expense of time within which the nuclear weapons might be made operational."

The process by which these contending views were made to clarify the issue, and the options, and the pros and cons over a week of private deliberations is an instructive example of decision-making. Unfortunately, changes in relationships between the press and government -- the pervasiveness of the press on the one hand, and the prevalence of leaks on the other -- make the idea of such a week of private deliberation an anachronism in the 1980's. Were such an issue to arise today, the National Security Advisor would have to tell the President that the probable leak-time for the discovery was no more than 48 hours. Had Kennedy been forced to choose in the first 48 hours, he would almost certainly have chosen the air strike, substantially increasing the likelihood that the confrontation would have lead to nuclear war.

3. A Constitutional Issue. Post Vietnam, the War Powers Act sought to assure a greater congressional role in war-making. The issue of war making, and the decision to take actions that might trigger war, poses dramatic questions the Commission faces in a way that touches a central Constitutional issue: namely, the respective roles of President and Congress in making war. Again, my views on this question are attached in Appendix 137-150. In spite of the Constitution's clear intent, Presidents have from the beginning sent troops into battle without declarations of war and shied away from Congress in making decisions about war. The reasons why are clear: secrecy, flexibility, and uncertainty. There is no way to square this circle. But six key questions to be asked are I think stated clearly on pages 148 - 150.

Good luck.

The Lessons of the Cuban Missile Crisis

For 13 chilling days in October 1962, it seemed that John F. Kennedy and Nikita S. Khrushchev might be playing out the opening scenes of World War III. The Cuban missile crisis was a uniquely compact moment of history. For the first time in the nuclear age, the two superpowers found themselves in a sort of moral road test of their apocalyptic powers.

The crisis blew up suddenly. The U.S. discovered that the Soviet Union, despite repeated and solemn denials, was installing nuclear missiles in Cuba. An American U-2 spy plane came back with photographs of the bases and their support facilities under construction, clear, irrefutable evidence. Kennedy assembled a task force of advisers. Some of them wanted to invade Cuba. In the end, Kennedy chose a course of artful restraint: he laid down a naval quarantine. After six days, Khrushchev announced that the Soviet missiles would be dismantled.

The crisis served some purposes. The U.S. and the Soviet Union have had no comparable collision since then. On the other hand, the humiliation that Khrushchev suffered may have hastened his fall. The experience may be partly responsible for both the Soviet military buildup in the past two decades and whatever enthusiasm the Soviets have displayed for nuclear disarmament.

Now, on the 20th anniversary of the crisis, six of Kennedy's men have collaborated in a remarkable joint statement on the lessons of that October. It contains some new information, particularly in Point Eight, and at least one of their conclusions is startling and controversial: their thought that, contrary to the widespread assumption of the past two decades, the American nuclear superiority over the Soviets in 1962 had no crucial influence with Washington or Moscow at the time—and that in general, nuclear superiority is insignificant.

The authors are Dean Rusk, then Secretary of State; Robert McNamara, Secretary of Defense; George W. Ball, Under Secretary of State; Roswell L. Gilpatrick, Deputy Secretary of Defense; Theodore Sorensen, special counsel to the President; and McGeorge Bundy, special assistant to the President for national security affairs. Their analysis:

In the years since the Cuban missile crisis, many commentators have examined the affair and offered a wide variety of conclusions. It seems fitting now that some of us who worked particularly closely with President Kennedy during that crisis should offer a few comments, with the advantages both of participation and of hindsight.

FIRST: The crisis could and should have been avoided. If we had done an earlier, stronger and clearer job of explaining our position on Soviet nuclear weapons in the Western Hemisphere, or if the Soviet government had more carefully assessed the evidence that did exist on this point, it is likely that the missiles would never have been sent to Cuba. *The importance of accurate mutual assessment of interests between the two superpowers is evident and continuous.*

SECOND: Reliable intelligence permitting an effective choice of response was obtained only just in time. It was primarily a mistake by policymakers, not by professionals, that made such intelligence unavailable sooner. But it was also a timely recognition

of the need for thorough overflight, not without its hazards, that produced the decisive photographs. The usefulness and scope of inspection from above, also employed in monitoring the Soviet missile withdrawal, should never be underestimated. *When the importance of accurate information for a crucial policy decision is high enough, risks not otherwise acceptable in collecting intelligence can become profoundly prudent.*

THIRD: The President wisely took his time in choosing a course of action. A quick decision would certainly have been less carefully designed and could well have produced a much higher risk of catastrophe. The fact that the crisis did not become public in its first week obviously made it easier for President Kennedy to consider his options with a maximum of care and a minimum of outside pressure. Not every future crisis will be so quiet in its first phase, but Americans should always respect the need for a period of confidential and careful deliberation in dealing with a major international crisis.



Kennedy signing Cuban quarantine

FOURTH: The decisive military element in the resolution of the crisis was our clearly available and applicable superiority in conventional weapons within the area of the crisis. U.S. naval forces, quickly deployable for the blockade of offensive weapons that was sensibly termed a quarantine, and the availability of U.S. ground and air forces sufficient to execute an invasion if necessary, made the difference. American nuclear superiority was not in our view a critical factor, for the fundamental and controlling reason that nuclear war, already in 1962, would have been an unexampled catastrophe for both sides: the balance of terror so eloquently described by Winston Churchill seven years earlier was in full operation. No one of us ever reviewed the nuclear balance for comfort in those hard weeks. *The Cuban missile crisis illustrates not the significance but the insignificance of nuclear superiority in the face of survivable thermonuclear retaliatory forces. It also shows the crucial role of rapidly available conventional strength.*

FIFTH: The political and military pressure created by the quarantine was matched by a diplomatic effort that ignored no relevant means of communication with both our friends and our adversary. Communication to and from our allies in Europe was intense, and their support sturdy. The Organization of American States gave the moral and legal authority of its regional backing to the quarantine, making it plain that Soviet nuclear weapons were profoundly unwelcome in the Americas. In the U.N., Ambassador Adlai Stevenson drove home with angry eloquence and unanswerable photographic evidence the facts of the Soviet deployment and deception.

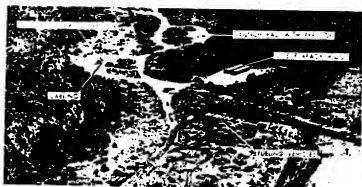
Still more important, communication was established and maintained, once our basic course was set, with the government of the Soviet Union. If the crisis itself showed the cost of mutual incomprehension, its resolution showed the value of serious and sustained communication, and in particular of direct exchanges between the two heads of government.

When great states come anywhere near the brink in the nuclear age, there is no room for games of blindman's buff. Nor can friends be led by silence. They must know what we are doing and why. *Effective communication is never more important than when there is a military confrontation.*

SIXTH: This diplomatic effort and indeed our whole course of action were greatly reinforced by the fact that our position was squarely based on irrefutable evidence that the Soviet government was doing exactly what it had repeatedly denied that it would do. The support of our allies and the readiness of the Soviet government to draw back were heavily affected by the public demonstration of a Soviet course of conduct that simply could not be defended. In this demonstration no evidence less explicit and authoritative than that of photography would have been sufficient, and it was one of President Kennedy's best decisions that the ordinary requirements of secrecy in such matters should be brushed aside in the interest of persuasive exposition. *There are times when a display of hard evidence is more valuable than protection of intelligence techniques.*

SEVENTH: In the successful resolution of the crisis, restraint was as important as strength. In particular, we avoided any early initiation of battle by American forces, and indeed we took no action of any kind that would have forced an instant and possibly ill-considered response. Moreover, we limited our demands to the restoration of the *status quo ante*, that is, the removal of any Soviet nuclear capability from Cuba. There was no demand for "total victory" or "unconditional surrender." These choices gave the Soviet government both time and opportunity to respond with equal restraint. *It is wrong in relations between the superpowers, for either side to leave the other with no way out but war or humiliation.*

EIGHTH: On two points of particular interest to the Soviet government, we made sure that it had the benefit of knowing the independently reached positions of President Kennedy. One assurance was public and the other private.



U.S. spy-plane photograph showing a Cuban missile site

Publicly we made it clear that the U.S. would not invade Cuba if the Soviet missiles were withdrawn. The President never shared the view that the missile crisis should be "used" to pick a fight to the finish with Castro; he correctly insisted that the real issue in the crisis was with the Soviet government, and that the one vital bone of contention was the secret and deceit-covered movement of Soviet missiles into Cuba. He recognized that an invasion by U.S. forces would be bitter and bloody, and that it would leave festering wounds in the body politic of the Western Hemisphere. The no-invasion assurance was not a concession, but a statement of our own clear preference—once the missiles were withdrawn.

The second and private assurance—communicated on the President's instructions by Robert Kennedy to Soviet Ambassador Anatoli Dobrynin on the evening of Oct. 27—was that the President had determined that once the crisis was resolved, the American missiles then in Turkey would be removed. (The essence of this secret assurance was revealed by Robert Kennedy in his 1969 book *Thirteen Days*, and a more detailed account, drawn from many sources but not from discussion with any of us, was published by Arthur M. Schlesinger Jr. in *Robert Kennedy and His Times* in 1978. In these circumstances, we think it is now proper for those of us privy to that decision to discuss the matter.) This could not be a "deal"—our missiles in Turkey or theirs in Cuba—as the Soviet government had just proposed. The matter involved the concerns of our allies, and we could not put ourselves in the position of appearing to trade their protection for our own. But in fact President Kennedy had long since reached the conclusion that the outmoded and vulnerable missiles in Turkey should be withdrawn. In the spring of 1961 Secretary Rusk had begun the necessary discussions with high Turkish officials. These officials asked for delay, at least until Polaris submarines could be deployed in the Mediterranean. While the

matter was not pressed to a conclusion in the following year and a half, the missile crisis itself reinforced the President's convictions. It was entirely right that the Soviet government should understand this reality.

This second assurance was kept secret because the few who knew about it at the time were in unanimous agreement that any other course would have had explosive and destructive effects on the security of the U.S. and its allies. If made public in the context of the Soviet proposal to make a "deal," the unilateral decision reached by the President would have been misread as an unwilling concession granted in fear at the expense of an ally. It seemed better to tell the Soviets the real position in private, and in a way that would prevent any such misunderstanding. Robert Kennedy made it plain to Ambassador Dobrynin that any attempt to treat the President's unilateral assurance as part of a deal would simply make that assurance inoperative.

Although for separate reasons neither the public nor the private assurance ever became a formal commitment of the U.S. Government, the validity of both was demonstrated by our later actions: there was no invasion of Cuba, and the vulnerable missiles in Turkey (and Italy) were withdrawn, with allied concurrence, to be replaced by invulnerable Polaris submarines. Both results were in our own clear interest, and both assurances were

helpful in making it easier for the Soviet government to decide to withdraw its missiles.

In part this was secret diplomacy, including a secret assurance. Any failure to make good on that assurance would obviously have had damaging effects on Soviet-American relations. But it is of critical importance here that the President gave no assurance that went beyond his own presidential powers; in particular he made no commitment that required congressional approval or even support. The decision that the missiles in Turkey should be removed was one that the President had full and unquestioned authority to make and execute.

When it will help your own country for your adversary to know your settled intentions, you should find effective ways of making sure that he does, and a secret assurance is justified when a you can keep your word, and b) no other course can avoid grave damage to your country's legitimate interests.

NINTH: The gravest risk in this crisis was not that either head of government desired to initiate a major escalation but that events would produce actions, reactions or miscalculations carrying the conflict beyond the control of one or the other or both. In retrospect we are inclined to think that both men would have taken every possible step to prevent such a result, but at the time no one near the top of either government could have that certainty about the other side. *In any crisis involving the superpowers, firm control by the leads of both governments is essential to the avoidance of an unpredictably escalating conflict.*

TENTH: The successful resolution of the Cuban missile crisis was fundamentally the achievement of two men, John F. Kennedy and Nikita S. Khrushchev. We know that in this anniversary year John Kennedy would wish us to emphasize the contribution of Khrushchev; the fact that an earlier and less prudent decision by the Soviet leader made the crisis inevitable does not detract from the statesmanship of his change of course. We may be forgiven, however, if we give the last and highest word of honor to our own President, whose cautious determination, steady composure, deep-seated compassion and, above all, continuously attentive control of our options and actions brilliantly served his country and all mankind.

THIRTEEN DAYS

*A memoir of the
Cuban missile crisis*

Robert F. Kennedy



With an Afterword by RICHARD E. NEUSTADT and GRAHAM T. ALLISON

APPENDICES 118-121 and 137-150

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forced this presidential point of view, adding to White House concern about a third week of crisis. If the Russians held their course for a mere seventy-two hours, we would have to escalate a step, probably by bombing Cuban sites. In logic, they should then bomb Turkish sites. Then we . . . ; then they. . . . The third step is what evidently haunted Kennedy. If Khrushchev's capability to calculate and to control was something like his own, then neither's might suffice to guide them both through that third step without holocaust.

NEW CHECKS AND BALANCES

In warmaking, the Constitution contemplated enforced collaboration between the President and his fellow politicians on Capitol Hill. In practice, as the missile crisis illustrates, a strong role for Congress is by no means assured. This does not mean, however, that Presidents act in isolation. Any modern President stands at the center of a watchful circle with whose members he cannot help but consult. Today, indeed, he is more dependent on Executive officials for advice as well as execution than our Constitution makers could have anticipated two centuries ago.

New checks and balances replace the old. There is, however, one extraordinary difference: the old circle was supposedly comprised of men who owed their places to elections, who themselves had experienced the risks of nomination and electioneering. Political accountability conferred on each, firsthand, legitimacy as an agent of the people. Indeed, our Constitution's democratic element consisted mainly in reserving to these men the great decisions on the use of force. By contrast, the new circle is appointive or co-optive: congressmen may enter it and so may private citizens when their service as surrogates is wanted by a President. But mostly, and continuously, those assured an

entry are the President's own appointees: department heads, Chiefs of Staff, White House aides, and others whose institutional positions or personal relations make their presence virtual necessities for him. As this implies, they are by no means "mere" subordinates. He is no freer than he would have been with Congress to ignore them. But neither are they colleagues in the sense of sharing either his legitimacy or accountability. Nowadays those rest with him alone.

Consider again the group that made fundamental choices for the United States during the missile crisis. Who were the members?

First, there was the President as constitutional Commander in Chief, nationally elected. No other elective officer was so involved (save the Vice-President, an appropriately attentive listener). No member of the Senate or House stands astride the action channel for decisions on nuclear war. None is consulted unless the President so chooses as a matter of discretion. In October 1962, Congress remained ignorant of the Soviet missiles in Cuba during the first week of Ex Comm deliberations. Only on October 22, two hours before his broadcast to the world, did the President assemble the leaders of both houses, advise them of the missiles, and inform them that he had decided to respond with a naval quarantine. The Congressional leaders disagreed strongly with the course the President had chosen. Senator Fulbright in particular urged that the United States respond more forcefully. Senator Russell stated that "he could not live with himself if he did not say in the strongest possible terms how important it was that we act with greater strength." The Senators insisted that the record show they had been informed, not consulted. But Congressional objections had no effect at that point. Nor was any member of Congress deeply involved in subsequent decisions during the week that followed.

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Second, there were several men whose institutional positions made them unavoidable parties to any major choice about nuclear war: the Secretary of Defense, the Secretary of State, the Director of the Central Intelligence Agency, the Chairman of the Joint Chiefs of Staff, and the White House Assistant for National Security Affairs. Why were these men involved of necessity? Because each had a portion of the wherewithal for action. As the President considered possible military moves, who could specify the spectrum of feasible options except the Joint Chiefs of Staff and their subordinates? When the President chose blockade, no one but the Secretary of Defense had both the authority and the information to oversee its implementation. Who told the President about the presence of Soviet missiles in Cuba? His Assistant for National Security Affairs, McGeorge Bundy. (Indeed, Bundy chose not to tell him on the evening of Monday, October 15, when the CIA informed Bundy of this fact, but rather to let the President get a good night's sleep on the fifteenth before telling him on the morning of the sixteenth.) Bundy learned about the missiles from the CIA; the Director of the CIA, John McCone, and the machine under him served as the "eyes and ears" of the U.S. government in keeping abreast of developments in Cuba. The need for information, analysis, and assistance in implementation meant that Deputy Secretaries and even the relevant Assistant Secretaries also were included, as, for example, Paul Nitze of Defense.

Third, there were the President's men: his brother and campaign manager, the Attorney General, and his Special Counsel, Theodore Sorensen. Sorensen had joined JFK when he went to the Senate in 1953 and ever since had been among his closest personal and programmatic advisers as well as his principal speechwriter. The President depended on Sorensen for more than words in speeches. Sorensen, and even more Robert Kennedy, helped John

Kennedy assess the full spectrum of his responsibilities as President. Having depended on the national security apparatus alone in making the fateful choice about the Bay of Pigs, Kennedy insisted thereafter that no major national security decision be made without including RFK and Sorensen in the process.

Fourth, there were the surrogates, some of them officials, some from private life. Dean Acheson was a former Secretary of State; Robert Lovett, a former Secretary of Defense. Both had served the Truman Administration, Lovett as a Republican. They were involved because the President happened to value their judgment and also because he knew that others valued their judgment—especially in the “bipartisan foreign policy establishment”—on Capitol Hill and off. Adlai Stevenson, Ambassador to the United Nations, can be counted of their number since his position as a former Democratic presidential candidate and liberal outweighed the importance of his official role. The presence of the Secretary of the Treasury, Douglas Dillon, attests not only to the weight accorded his department in matters of foreign affairs—a vital if half-hidden feature of our government—but also to his representative character as Eisenhower’s former Undersecretary of State.

The importance of the individuals in the circle becomes clear as one reflects on the extraordinary role they played. Decisions passed through the President’s hand but were not simply the product of his mind alone. Both the definition of the issue and the choice of the U.S. response *emerged* from deliberations of the group. Robert Kennedy’s account is suggestive, both about individual perceptions and preferences, and about the process by which the group came to the blockade.*

On the morning of Tuesday, October 16, McGeorge

* Other accounts supplement his discussion. For these accounts, see p. 179. In the paragraphs that follow, we have drawn on some of them.

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dent and those of "his" officialdom are incompatible. Rarely can both be served alike. Usually one suffers as the other benefits. The missile crisis seems a rarity in just this sense. But probably it would not seem so had it lasted for another week.*

Since World War II¹ our government has often tried to square the circle of this incompatibility by tinkering with structure. Alternately, efforts have been made to tighten up procedures for official consultation and to loosen their constraints upon the White House. Sometimes efforts of both sorts have been made at once, with contradictory consequences. Each Administration has begun by altering the structure it inherited to cure a "weakness" in its predecessor's practice as observed from the outside or from below. The National Security Council, created by act of Congress in 1947, has been called Secretary of Defense James Forrestal's revenge on Franklin Roosevelt for the latter's quite incurable and sometimes costly tendency to keep all threads in his own hands, or anyway in no one else's. The subordinate committee structure Eisenhower later sponsored—the Planning Board and Operations Coordinating Board—was said to be a cure-all for alleged disorder under Truman. Kennedy's abrupt dismantling of that structure was regarded as essential to unleash the human energies locked up inside its "paper mill." Nixon now "restores" a somewhat comparable structure, ending the "excesses" of the Johnson White House, but he ties it to a presidential staff more formidable in numbers and in jurisdiction than his predecessors ever had employed.

So goes the tinkering with structure. None of it thus far has obviated the uncomfortable fact that Presidents rarely are better served than when officials are frustrated, and vice versa.

* The preceding paragraphs are adapted from Neustadt, *op. cit.*

In terms of structure, Kennedy's most sophisticated contribution was his refusal to continue the Ex Comm once the missile crisis passed its peak. Reportedly he saw it as an indispensable piece of machinery for a crisis-time, indispensable because so flexible and so removed from vested rights or interests. Its use at any other time would vitiate those qualities. Thus he ordered it disbanded, to the dismay of some members, and the very term "Ex Comm" was barred from current use. In this, although not consciously, he followed Truman's practice at the outbreak of the Korean War.

Kennedy's decision to disband the Ex Comm is expressive of the underlying dilemma. There appear to be no ways whereby a President can be assured routinely, at all times and places, of the information and control he needs while simultaneously assuring to officials the hearings, the due process, the appeals, and the forbearance they require of the White House. Even at the farthest remove from routine, the missile crisis above all, these two assurances seem barely, temporarily compatible. Yet risks of rule lie quite as much in bureaucratic momentum as in presidential misjudgment. Frustrated, uncomprehending bureaucrats can be as much a danger to us all, and to a President, as faults in his own knowledge, or his judgment, or his temperament. The check and balance system we encounter in the Missile Age does not appear to check or balance its destructive hazards. Rather, it may readily enlarge them. For this there is no help in sight from any source except the human qualities of prudence, luck, and fortitude displayed in 1962 by fourteen men for thirteen days.

A CONSTITUTIONAL ISSUE?

Our Constitution is a product of the eighteenth century. Its authors were men of the Enlightenment and also

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men of action: political philosophers—mostly at second-hand—with firsthand practical experience. They were intensely conscious of the *paradox of rulership* as manifested by the course of history up to their time. On the one hand, the common good required that political power be placed in some human hands. Only by yielding considerable discretion to a central public authority could citizens secure the common defense, law, order, or personal liberties. But on the other hand, to establish a powerful public authority was to create enormous risks of the misuse of power. As so often before, the rulers, being human and thus fallible, might choose unwisely, or might implement their choices clumsily, at awful cost. Our Constitution makers aimed at an effective central government, else they would not have come to Philadelphia. But they sought to minimize the risks.

The product of their work had four distinctive features. One of these was limited authority: the federal Bill of Rights and its state counterparts were meant to wall off civil liberties, including private property, from arbitrary governmental action. A second feature was shared powers: federal and state governments had overlapping functions, and within the federal structure, so did President, House, Senate, Supreme Court. A third feature was separated institutions: each power-sharing body had a separate base of political accountability, hence constituency, and these were kept distinct from one another. A fourth feature was legitimation by the symbols of popular sovereignty: the people replaced the monarchy, and this was done in such a way as to clothe institutions with their status, while yielding little to direct democracy.

Throughout, the underlying theme was checks and balances: rights hedging authority, powers checking powers, separate institutions in enforced collaboration, with political accountability divided and legitimacy dispersed. No man was entrusted with unlimited prerogatives; neither

was the mob. Instead, a goodly group of men, each with a piece of power, backed by a constituency, would scrutinize each other, balancing each other, as they tried to fit their pieces into governance. Thus human failings might be cancelled out.

Then as now the ultimate expression of authority was war, and there this general pattern was applied with special care. The model evidently was the English royal prerogative as modified by Parliament's control over the purse. Our Constitution-makers modified it further. Congress as a substitute for Parliament would also declare war. The Senate as a parliamentary body was to share in making treaties of alliance or of peace. Our President, as substitute for King, had no prerogative to do these things alone. What he retained, alone, was actual command of such armed forces as Congressional enactments gave him leave to raise and keep. It thus was the intention that recourse to war required a *collaborative* judgment by the whole body of men in national elective office. Presidents could not declare war, congressmen could not deploy the troops. On this as on all lesser issues, these men were to check and balance one another.

Yet from the start of our development under the Constitution, Presidents have sent troops into battle without declarations of war. This has occurred quite regularly since Thomas Jefferson dispatched marines against the Barbary pirates.* Moreover, of the conflicts known to us

* If one includes all instances in which American armed forces were used by Executive discretion—military as well as presidential—against the forces and persons of other countries without a declaration of war, the list numbers over one hundred. For a partial listing, see U.S., Department of State, *Right to Protect Citizens in Foreign Countries by Landing Force*, memorandum of the Solicitor for the Department of State, 3rd rev. ed., 1934. Among the more important were Polk's occupation of the Mexican border territory, Wilson's interventions in Mexico and Siberia, and interventions in the Dominican Republic by no fewer than four Presidents.

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as "wars," three of the four most costly—measured by both life and money—have been undeclared: the Civil War, the Korean War, and now Vietnam. Had war begun in October 1962, its aftermath, perforce, would also have been undeclared.

The Civil War began, in Northern eyes, as a rebellion. In 1861, when South Carolina seized Fort Sumter, Congress was out of session with its Southerners beyond recall. Korea and Vietnam, however, are another matter: both were foreign wars and both began when Congress was in session. In 1950 and in 1965 the Presidents concerned did not apply to Congress. Instead they used their own command authority to send forces into war without a declaration. So did Nixon when our forces crossed the border of Cambodia. So would Kennedy have done, it seems, had there been a third week of crisis over Cuba.

Thirteen Days affords us many clues as to why modern Presidents have shied away from Congress in making decisions about war. One clue is *secrecy*. Before announcing the first step in his response, Kennedy could not disclose to anyone who lacked a rigid "need to know" what the U-2 had discovered. Had the discovery been widely known within the government, it would have leaked out. Had it leaked, the Administration's diplomatic initiative, achieved by making a countermove when unmasking Soviet duplicity, would have been lost. As it turned out, this was perhaps the best kept secret in American history. But only barely. By Saturday, James Reston of the *New York Times* had the story. A phone call from the President to his editor was necessary to delay the story until after the White House announcement.

A second clue is *flexibility*. It took extraordinary care and subtlety to find the "right" first-step response to Soviet missiles. Equal care was needed to design that step so that it signaled our intention to the Soviets, specified clearly

what we wanted of Khrushchev, and left Kennedy poised for the next round. In that process, he could not commit himself to anyone without forfeiting maneuver room in dealing with Khrushchev.

Third, flexibility is compounded by *uncertainty*. Soviet intentions were the riddle to be read. These did not declare themselves with any blinding light like the Japanese attack in 1941. Uncertainty is compounded by *complexity*. To marshall our own forces and deploy them, and control them, to persuade our allies; to inform a hundred other governments through the United Nations; to say enough, but not too much in public; meanwhile trying to communicate effectually with Moscow—all this was to load a staggering burden on men already encumbered by innumerable governmental tasks. Finally, everything is compounded by *time*. Everything had to be done almost at once, under the relentless pressure of contemporary technology. Dispatch was of the essence.

Taken together, these factors—above all, time—limit the number of men with whom the constitutional Commander in Chief can engage in meaningful consultation. To maximize the prospect of a wise and viable choice, some interests cannot be excluded. In the missile crisis the issue was pre-eminently a matter of *defense* and *diplomacy*; it depended throughout on the capability of our *intelligence* and posed the possibility of *military* action. As constituted, the Ex Comm assured representation of these interests. Natural parochialism, stemming from the governmental positions of these men, guaranteed that considerations of defense, diplomacy, intelligence, and military action would be voiced. But, potentially, the life of the nation was at stake. How was this interest represented? By the President himself, with aides of his own choosing, not least RFK.

Time made the presidential mind the only source

available from which to draw politically legitimated judgments on what, broadly speaking, can be termed the political feasibilities of contemplated action vis-à-vis our world antagonists: judgments on where history was tending, what opponents could stand, what friends would take, what officials would enforce, what men in the street would tolerate—judgments on the balance of support, opposition, and indifference, at home and abroad.

Where was Congress? What about those other minds legitimated by election? They were out of play, except to have their leadership informed at the last moment. Earlier consultation offered nothing indispensable. Congress, to be sure, could add legitimacy, but of this the President conceived he had enough. As a nationally elective officer he was, himself, more representative than any single congressman or senator and no less representative than all of them together. Besides, command decisions rested constitutionally with his office, not theirs. So he decided first and told them after.

Precursors of those thirteen days were the four days, June 24-27, 1950, from the time the North Koreans crossed the border until we committed troops then occupying Japan. As Kennedy would do some twelve years later, President Truman called into almost continuous session the officials most concerned, foreshadowing the Ex Comm; with their advice he escalated step by step to match successive revelations of North Korean strength and South Korean weakness, sending in observers while appealing to the United Nations, neutralizing Formosa, committing air power, and last committing nearby ground forces. Like Kennedy, Truman informed the Congressional leadership of his command decisions, which were far more generally applauded at the moment than in Kennedy's case. But Truman consciously forbore to seek Congressional action.

Given the necessity for timely choice, and the sur-

rounding circumstances, Truman thought a declaration of war wholly inappropriate. Congressional action of that sort had last been taken in December 1941 against the Axis Powers. Nine years later it implied, both publicly and internationally, not limited hostilities, but rather total war pursued to enemy surrender. Also it implied no other termination than by peace treaty, with Senate ratification, or by resolution of the two houses of Congress. Truman was endeavoring to limit warfare, not to spread it, and to end it expeditiously. He wanted neither his constituents nor the United Nations, nor our allies, nor Moscow, nor Peking, nor—and not least—the Pentagon to view Korea in the guise of World War II. Troops were nearby in Japan. He had command authority to use them. He had four days to decide on their use. In these terms there could be no role for Congress as a partner in decision.

Truman might have made Congress a ratifier of decision. On the fifth day or the sixth he might have sought a resolution of support. In the prevailing climate there is no doubt that he could have got it. He chose not to do so, lest it blur for his successors the command authority at their disposal. Instead he pointed to the United Nations under Senate-approved treaty, justified his action by a United Nations resolution, and asked Congress for the money and controls to prosecute the war. Congress complied. As the fighting dragged on after Chinese intervention, however, Truman paid a heavy political price for failing to make Congress share his June decision. This became "Truman's war." To it can be attributed the defeat of Truman's party in the 1952 elections and the Presidency of Dwight D. Eisenhower.

Conscious of this cost to Truman, the Eisenhower Administration devised a protective means of *pre-associating* Congress with command decision, the "Quemoy-Matsu" formula, which Speaker of the House Sam Rayburn char-

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acterized at the time as a "blank check." This was a Congressional resolution covering a given geographic area, which authorized the President to do no more than he had constitutional authority to do: employ armed force if circumstances should warrant. As pioneered by Eisenhower, this formula required first such tension in the area that patriotic congressmen could not refuse, and second such good fortune that the future use of force, if any, was short-lived. Eisenhower twice employed the formula, meeting both requirements, once off the China coast, once in the Middle East. It remained for Lyndon Johnson to employ it in Vietnam.

Of these requirements, Vietnam met the first but missed the second. A naval incident off North Vietnam sufficed for the Tonkin Gulf Resolution, but the use of force proved not to be short-lived. After Americanization of the Vietnam War in the first seven months of 1965, Johnson could have had Congress ratify his decision. Like Truman, he refused. To do so would have meant public acknowledgment that we had entered upon large-scale hostilities likely to last several years. This would have precluded a low-posture, low-visibility approach; it would have precipitated sharp divisions between "hawks" and "doves," subjecting the war effort to intense pressures from each. Moreover, proclamation of sustained hostilities, accompanied by calls for troops and taxes, almost certainly would have delayed or set aside Congressional action on the legislative program for the "Great Society."

As months of war turned into years, however, the President stood alone, a lightning rod for dissent. Having never committed themselves to an American war in Vietnam, members of the Senate and House felt free to attack "Johnson's war." Formally, the Tonkin Gulf Resolution of 1964 may have covered the President's course. Politically, it was a flimsy shield. In considering it initially, the Senate

had rejected an amendment stating that Congress did not endorse "extension of the present conflict"; this followed Senator Fulbright's assurance that such an amendment was needless. At the time, President Johnson was opening his campaign for election—against the Republican candidate Barry Goldwater—with word that "American boys should not do the fighting for Asian boys."

Thereafter, once the war had expanded, Congressional disillusion was fueled by a feeling of having been duped. When senators became President Johnson's critics, they tended to attack him sharply and bitterly. Attacks by congressmen helped to legitimate dissent in the country, encouraging others, especially in universities and the media. Moreover, the character of Congressional criticism gave some credibility to charges that the war was not only senseless and immoral, but also illegal. In the end, Johnson's fate, politically, somewhat resembled Truman's.

What does this reading of the recent past suggest about division of warmaking powers between President and Congress? For a nuclear crisis it is hard to fault the balance struck in 1962, tipped all the way toward the President in an Ex Comm. Secrecy, flexibility, uncertainty, and urgency—each alone makes a strong argument. Representation for essential interests underlines it. Together these impel the view that when a nuclear exchange impends, formal Congressional participation is not only inconvenient, but impracticable. In the missile crisis, if presidential decision had escalated to nuclear war, Congressional ratification would have been a mockery, or moot. Here the President is, and probably remains, the nation's Final Arbiter.

But does this logic carry over into warfare of a limited sort, nonnuclear by definition? If not, how are distinctions to be drawn, and how enforced?

It is easy to see why recent Presidents have kept away from Congress, acting on their own responsibility, at

such times as June 1950, or July 1965—or April 1970. Indeed their reasons resemble those affecting President Kennedy in October 1962. Many decisions must be made in secret. Congress is notoriously leaky. Skillful bargaining with the antagonist (or even one's allies) requires flexibility. Congressional enactments are not readily amended on short notice. In limited warfare the geography, the weaponry, the scale, and the intensity are all subject to bargaining, overt or tacit. So is termination. A war declared by Congress cannot formally be ended without further act of Congress. And while Americans are more accustomed now than in Korean days to draw distinctions among "wars," the fear of 1950 that an invocation of formalities associated last with World War II might signal an unlimited intent to citizens at home—or governments abroad—still weighed upon the White House as recently as 1965.

Arguments like these led President Johnson to prosecute the Vietnam War at a substantial price, the price of foregoing "war powers," constitutional and statutory. These confer on the White House vast authority in home-front spheres like economic mobilization, public order, news management. But during the Korean War the Supreme Court decided that these powers flowed only from wars declared by Congress. Rather than see Congress act, Johnson dispensed with the authority. President Nixon follows the same course. This suggests how strong the case appears, at least from the perspective of two Presidents.

Yet Vietnam's cost, both human and material, and its duration, coupled with the absence of agreed success or even agreed purpose, has brought into being an opposed perspective, strongly espoused in the Senate, the more so as White House legitimacy has been subject to sustained attack from a variety of sources in the country. Not since Korea has there been so much discussion of the need, and of assorted means, to limit presidential freedom on the

military side of foreign policy. And where President Truman was denounced for failing to employ more force, fight wider war, win "victory," President Nixon's sharpest critics take the opposite tack. So did President Johnson's.

The current counterargument, opposing White House logic, is least of all a matter of form, much more a matter of substance. The issue is not literal adherence to the Constitution's terms but rather functional equivalence for their intent, namely that the body of elected men on Capitol Hill share in White House decisions at the time warfare begins. The power of the purse does not suffice; withholding funds from forces in the field is not a practicable course for most elective politicians. What is wanted is a voice before those forces get committed beyond recall.

A number of devices aimed at "redressing the constitutional balance" have been proposed in Congress. These span a spectrum from requiring formal action to regularizing informal consultation. Specifically, recent proposals include: (1) a requirement of affirmative legislative action by both houses of Congress for any military hostilities extending beyond thirty days; (2) an option of legislative veto by either house of troop commitments overseas; (3) a statutory prohibition of American military action (or supply) in certain countries; (4) a requirement for presidential consultation, in advance of action, with a select group like the relevant committee chairmen and ranking minority members. Other proposals are sure to be forthcoming as the Vietnam War drags on.

From the perspective of the last twenty years, even the least of these proposals places an extraordinary constraint upon the President. But push back another ten years and all seems ordinary. The great divide is World War II. Right up until Pearl Harbor, Franklin Roosevelt was more constrained than any recent President. Witness the tortuous process by which he transferred fifty overage American

destroyers to Great Britain after the fall of France.* No current proposal would seem able to do more than make a future President work as hard as he did in that instance.

Whether Presidents should now be so constrained, and if so how, are matters for judgment. The closer one looks at these proposals the more complicated are the issues to be judged. Issues come in at least six clusters. Everyone concerned has these to weigh:

First, what is the prospect for "good" decisions on war, or the avoidance of war, under the distribution of power and rules of the game envisaged by each proposal? Which proposals offer the highest probability for getting the nation into the wars one prefers we enter, and keeping us out of the wars he prefers we avoid? Obviously, Americans differ on this issue, some favoring World War II, Korea, and Vietnam alike, some wishing we had stayed out of all three, and many drawing distinctions among them.

It is well to recall that in 1812, and again in 1898, Congress rather than the President took the lead in forcing war upon the country. Indeed, the Spanish-American War might have been fought five years earlier had not President Cleveland made plain that he would not wage it even if Congress declared it.

Second, however one answers the first question "on the average," what about the next case, say in Southeast Asia or the Middle East? Under each proposed realignment of power, what are the prospects for "appropriate" choices? Again, there is obvious disagreement among Americans on what may be appropriate.

Third, how does each proposal fare as a mechanism for resolving differences among Americans over the de-

* See Warren F. Koolball, *The Most Unworldly Act: Lend-Lease 1939-1942* (Baltimore: Johns Hopkins Press, 1969), pp. 67-71, also Robert E. Sherwood, *Roosevelt and Hopkins* (New York: Harper, 1948), pp. 174-76.

cision to enter war? What are its prospects for producing politically viable decisions about war? Is the process one that most citizens recognize as legitimate for making such important decisions about issues on which the nation may be sharply divided?

Fourth, how will each proposed realignment affect the personal power of particular individuals now on the Washington scene? For those involved in making choices about these proposals, the importance of this consideration is clear. For those of us who watch from a distance, the effect of realignments on the influence of our political champions—and their opponents—is important.

Fifth, what is the likelihood of action on each proposal? At any given time, what seem to be prevailing attitudes in press and public? How strongly are these shared by whom in Congress? Where are they placed on which committees in which house? Who else is to be reached, by whom, and how? Legislation calls for successive majorities starting with subcommittees. Short of a tidal wave of public sentiment, one cannot count on legislative action without counting heads.

Finally, what of unintended side effects? These are the bane of constitutional reforms adopted to keep some contemporary problem from ever occurring again. The Twentieth Amendment is a classic case. In order to avoid, forevermore, the crisis that ensued in the four months from FDR's election to inaugural, we so shortened the learning time for Presidents-elect as to invite fiascos like the Bay of Pigs.

These issues share a common characteristic. None is abstractly "constitutional"; all are concretely political. So are the causes of concern behind them. So will be the results. Politically these issues are alive as products of Vietnam, once "Johnson's war," now Nixon's. Their resolution probably is bound up with its outcome. The connection

is a matter partly of specifics, from Cambodian invasions to Laotian incursions to whatever next fuels Congressional opposition. More important for the longer run is memory, not in terms befitting a historian but in the looser terms of popular impression.

Thirty years ago, what constrained Franklin Roosevelt was not alone, or even mainly, words in statutes, but rather the forbidding strength of isolationist convictions moving millions of his fellow citizens. What fueled their convictions? A deeply held impression that American involvement in the First World War had been a needless waste, a plot for profit.

Twenty years ago, or ten, or even five, the freedom, relatively speaking, felt and asserted by successive Presidents reflected not alone Congressional but also widespread press and public sentiment. What fueled this permissiveness? Above all "Munich" as remembered after victory in World War II.

Ten years hence we think the "balance" between President and Congress will be no less affected by the net impression of our longest war.

Documents
